IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY APPLICATION NO.837 OF 2006
IN
COMPANY APPLICATION NO.202 OF 2003
IN
COMPANY PETITION NO.41 OF 1986
CONNECTED WITH
COMPANY APPLICATION (LODG.) NO. 517 OF 2004

The Board of Trustees of the Port of
Kolkata ..Applicants.

Vs.

The Official Liquidator, High Court, Bombay
as Liquidator of Machinery Manufacturers
Corporation Ltd. & Ors. ..Respondents.

....

Mr. Umesh Shetty with Mr. A.S. Doctor and Mr. Mauji i/b Mulla & Mulla for the Applicants.
Mrs. Shakuntala Joshi for the Security Guards.
Mrs. K.V. Gautam, Dy. Official Liquidator present.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

12th June, 2007.

P.C. :

1. The Board of Trustees for the Port of Kolkata is the Applicant before the Court and the reliefs that have been sought in the Company Application are as follows :

> "(a) that this Hon'ble Court be pleased to direct the Official Liquidator to implement the Order dated 16th January, 2004 passed by this Hon'ble Court in Company Application No. 202 of 2003 in Company Petition No. 41 of 1996 by handing over possession of Plots "A", "B" and "C" together with buildings and structures constructed/ erected thereon by the Company in liquidation to the Applicants by evicting Respondent Nos. 5 to 65 and any other person who may be in occupation of any portion of the land of the said Plots A", "B" and "C" and structures standing thereon if necessary, by using such force as may be necessary;
>
> (b) The Deputy Commissioner of Police (Port Division), Kolkata be ordered and directed to provide necessary police protection to the Official Liquidator at the time of implementing the Hon'ble Courts Order;
>
> (c) The Ld. Official Liquidator be directed by the Hon'ble Court to handover possession of the building and structures constructed/ erected by the company in liquidation on the plots "A", "B" and "C" covered by the judgment and order dated 16th January, 2004 passed by this Hon'ble Court to the Applicants herein."

2. The subject matter of the Company Application are three plots of land, being Plots A, B and C together with the building and structures constructed thereon by the company in liquidation. Some part of the structures is in the occupation of Respondents 5 to 65 – who are ex-employees or as the case may be, their dependents of the company in liquidation. The land was let out to a company by the

name of Machinery Manufacturers Corporation Limited on 13th June, 1977 and 25th September, 1979 for a period of 30 years renewable thereafter for a like period. The lessee committed a default in the payment of lease rentals from July 1987. On 26th April, 1989 the Company was ordered to be wound up by this Court and the Official Liquidator was appointed to take charge of the business and assets of the company. On 15th and 16th March, 1990 the Liquidator proceeded to take possession of the property and entrusted the security arrangements to a security agency. At the time when possession was taken over some of the ex-employees were found to be in possession of the staff quarters and it is the contention of the Applicant that the occupants have in fact assured the security agency that the quarters would be vacated within a stipulated period. From time to time the Applicants called upon the Official Liquidator to hand over possession of the demised lands and eventually an application was instituted before this Court on 14th November, 2002 (Company Application 202 of 2003) seeking such reliefs.

3. By an order dated 16th January, 2004 the Company

Application was made absolute in terms of prayer clause (b) which was to the following effect :

> “(b) that this Hon'ble Court be pleased to order and direct the Official Liquidator to release and hand over back possession of the plots “A”, “B” and “C”, more appropriately described in Exhibit 'A' to the affidavit in support of Judges Summons, to the Applicants within such time as may be directed by this Hon'ble Court.”

4. The Learned Single Judge, placing reliance on Clause 22 (2) of the conditions contained in the lease deed noted that there was an express agreement whereby it was lawful for the Applicants to enter upon the demised land in the event that the lessee went into liquidation. The company having gone into liquidation, the Learned Single Judge held that the Applicant was entitled to possession of the demised land in the exercise of its rights contained in the contractual stipulation.

5. The order of the Learned Single Judge was carried in appeal by ICICI Bank Limited according to which the company had prior to its liquidation agreed to create a charge in favour of the bank acting upon which monies were lent and advanced by the bank to the company. The bank had instituted proceedings before the Debts Recovery Tribunal for the recovery of its dues and the Learned Single Judge had in fact clarified that the observations contained in the order of the Court would not stand in the way of the proceedings before the Tribunal. The Division Bench of this Court confirmed the order of the learned Single Judge on 10th June, 2004 observing thus :

> "The present appellant admittedly is not a secured creditor in respect of the subject property as no charge has been created by the company (in liquidation) in respect of the subject property in favour of the present appellant. Merely because the company (in liquidation) agreed to create charge of the subject property which was in lease with them, it cannot be said that the appellant acquired any interest in the subject property. The admitted fact is that KPT – the present respondent No.1 is the owner of the subject property. The said property was given on lease to the company (in liquidation) initially for a period of 30 years extended thereafter for a further period of 30 years. Clause 22(2) of the lease deed entered into between KPT – the first respondent and the company (in liquidation) provided interalia that if the company goes in liquidation or is wound up whether compulsorily or voluntarily, the owner (first respondent) shall have the right of re-entry. There is no dispute that the company has gone in liquidation and in

> exercise thereof, the first respondent claimed right of re-entry which has been granted."

6. Some time in June 2004 a Company Application was filed by the MMC Workmen's Union. The principal relief that has been sought in the Company Application is to the following effect :

> "(a) The Official Liquidator be directed for making auction of the said Construction after perusal of lease Agreement made with Kolkata Port Trust Authority and the management of M. M. C. Ltd. (in liquidation) and disburse share of the workmen/ employees."

7. Both the application filed by the Board of Trustees of the Port of Kolkata (Company Application 837 of 2006) and the application filed by the union (Company Application (Lodg) 517 of 2004) have been heard together and are being disposed of by the present order. The ex-employees or as the case may be their dependents who are impleaded as Respondents 5 to 65 are duly served and counsel appearing for the Applicant has stated that affidavits of service have been filed in this Court.

8. The submission urged on behalf of the Applicant is that in

view of the order of this Court dated 16th January, 2004 as confirmed in appeal and read in the light of the express provisions of the lease deed under which the plots were let out to the company in liquidation, the Applicant is entitled to possession of the lands and structures standing thereon. Insofar as the workmen are concerned it has been urged that the workmen have no charge or interest in respect of the demised lands or any portion thereof or in respect of the structure standing thereon. The services of the workmen shall stand determined upon the order of winding up and this Court in the exercise of its jurisdiction under Section 446(2) and Section 468 of the Companies Act, 1956 has sufficient powers to direct the Official Liquidator to ensure that vacant and peaceful possession of the land and structures is handed over to the Applicant.

9. The order of the learned Single Judge dated 16th January, 2004 as well as the order of the Division Bench dated 10th June, 2004 are founded on the provisions contained in Clause 22 of the lease deed under which the Applicant as the lessor was lawfully entitled “without notice at any time” to enter upon the demised land or any

part thereof and to take possession in the event that the lessee being a company was ordered to be wound up. The lease deed, it may be noted also contained a stipulation, that upon the termination of the lease, the lessee was liable to remove at its own costs all the factories buildings, structures and fixtures erected thereon and all such factories buildings, structures and fixtures not so removed shall at the expiration or previous determination of the term of the lease become the absolute property of the Trustees without payment of any compensation to the lessee. In view of the express stipulations contained in this lease deed there can be no manner of doubt that upon the order of winding up, the Applicant was entitled to assert the right of re-entry and to take possession of the land and the structures standing thereon which became the absolute property of the Applicant.

10. The contention urged on behalf of the workmen proceeds on the footing that the workmen have a charge or interest in respect of the structures constructed by the company in liquidation. There is absolutely no basis or foundation either in law or in fact for the

assertion. Indeed, upon the company being wound up the land together with the structures became the absolute property of the Board of Trustees of the Port of Kolkata. The workmen had no subsisting interest either prior to the order of liquidation or thereafter.

11. The Company Court is vested with a sufficiently broad jurisdiction to grant relief of the nature that has been sought in these proceedings. Under sub- section (3) of Section 445 an order of winding up is deemed to be a notice of discharge to the officers and employees of the company except when the business of the company is continued. Sub section (2) of Section 446 empowers the Company Court to exercise jurisdiction to entertain or dispose of any question whatsoever whether of law or of fact which may relate to or arise in the course of winding up of a company. Section 468 empowers the Court to inter alia direct any officer or employee of the company to deliver or surrender any money, property or books and papers in his custody or control to which the company is prima facie entitled. The workmen have no subsisting right in respect of the property of the company. Their occupation related to their employment with the

company. Upon discharge of their services on the order of winding up, the workmen have no right to remain in occupation. The relief therefore sought by the union in Company Application (Lodg.) 517 of 2004 cannot be granted.

12 Accordingly Company Application 837 of 2006 shall have to be allowed and is accordingly made absolute in terms of prayer clauses (a), (b) and (c). Company Application (lodg.) 517 of 2004 shall accordingly stand dismissed.